

No. 14,853

United States Court of Appeals
For the Ninth Circuit

WILLIAM V. BOGGESE, as Protestant on
behalf of the City of Fairbanks,
Alaska, and THE CITY OF FAIRBANKS,
ALASKA,

Appellants,

VS.

BERRY CORPORATION, STEVE BOINICH
and UNITED STATES OF AMERICA,

Appellees.

Appeal from the District Court for the
District of Alaska, Fourth Division.

BRIEF FOR APPELLANTS.

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STATEMENT OF JURISDICTION.

This is an appeal from an order of the District Court for the District of Alaska, Fourth Division, entered April 18th, 1955, ordering the transfer of Beverage Dispensary License No. 5581 from the appellee Berry Corporation to the appellee Steve Boinich. The order appealed from was a final decision by the Court below that it had statutory authority to

transfer a liquor license from one location to another within the City of Fairbanks, Alaska.

As such a final decision, said order may be appealed to this Court under the provisions of Title 28, USCA, Section 1291.

STATEMENT OF CASE.

On March 30, 1955, the appellee Steve Boinich, at a public auction held by the appellee United States of America, purchased Beverage Dispensary License No. 5581. (Tr. 5, 6.) This license had been issued pursuant to the laws of the Territory of Alaska to the appellee Berry Corporation and authorized said Corporation to sell alcoholic beverages "for consumption on the premises only" at 418 Second Avenue in the City of Fairbanks, Alaska. (ACLA 1949, Sec. 35-4-21 (A).) Seizure of said license from the Berry Corporation by the United States for tax delinquencies had been accomplished on February 23, 1955. (Tr. 5, 6.)

On April 4th, 1955, the appellee Steve Boinich filed a paper denominated "Application For Liquor License in the Territory of Alaska" in the Court below. (Tr. 3.) Although so entitled, this application sought a transfer of said Beverage Dispensary License No. 5581 from the Berry Corporation to the appellee Boinich and for a change of the location of said business from 418 Second Avenue in the City of Fairbanks, Alaska, to 548 Second Avenue in said City. In lieu of a consent to the proposed transfer by

the Berry Corporation, a letter of consent by the United States of America relating the facts of said seizure and sale was attached to said application. (Tr. 5, 6.)

Also on April 4th, appellee Boinich filed a "Motion For Transfer of Liquor License" (Tr. 7) and a "Notice of Hearing" thereon. (Tr. 8.) This notice was addressed to the City Clerk of the City of Fairbanks, Alaska, and served on said Clerk apparently by direction of the Court below. (See Opinion of Court below, second paragraph, Tr. 15.)

The City of Fairbanks responded to said notice through its attorney by filing a Protest against the proposed transfer on April 7th, 1955. (Tr. 9-13.) This protest directly raised the question of whether or not the Court below possessed the authority to transfer a Beverage Dispensary License from one location to another.

By written opinion filed April 16th, 1955, the Court below affirmatively held that it had such authority (Tr. 16) and on April 18, 1955, ordered such transfer granted. (Tr. 19.)

From this order an appeal was taken to this Court on behalf of the appellant City of Fairbanks, Alaska.

SPECIFICATION OF ERROR RELIED UPON.

That the Court below erred in holding that a Beverage Dispensary License issued pursuant to the laws of the Territory of Alaska could be transferred from

one location to another and in ordering the license subject to these proceedings to be so transferred.

ARGUMENT OF CASE.

All relevant provisions of the statutes of the Territory of Alaska applicable to licenses of the class herein considered are set out in full in the Appendix to this Brief.

From a perusal of those statutes, it is clear that a beverage dispensary license confers a privilege on the holder thereof to conduct the authorized business only upon the licensed premises.

ACLA 1949, Section 35-4-14, as amended by Chapter 131, SLA 1953, requires an applicant for license to furnish "a description of the place for which the license is desired; giving address by street and number, or other information, so that location can be definitely determined." ACLA 1949, Section 35-4-21 (A) reads in part as follows:

"A Beverage Dispensary License shall give to the holder thereof the right to sell or serve on the premises beer, wine and hard liquor for consumption on the premises only. Provided, however, that the premises for which such license is issued shall not be connected by doors or otherwise with premises covered by any other license issued under these regulations; * * *"

Other language clearly indicative of legislative intent to confine a license to the premises for which it is issued is italicized in the Appendix.

Concerning the issuance of a license, the Territorial Legislature established elaborate safeguards to protect the interests of the people in the location of the premises to be licensed. First, as has been indicated, the applicant must file an application in the District Court for the District of Alaska, which must specify the location of his business with certainty. (ACLA 1949, Section 35-4-14, as amended by Chapter 131, SLA 1953.) If the application is for a place of business within the boundaries of an incorporated town, as in the instant case, it must be referred by the Clerk of the Court to the "City Council of that town" for its approval or disapproval. (ACLA 1949, Section 35-4-13, as amended by Chapter 131, SLA 1953.) If the application is for a place of business without the corporate limits of a town, then it must be accompanied by the "consent of two-thirds of citizens over the age of twenty-one years, residing within one mile of the place where the intoxicating liquor or liquors are to be manufactured, bartered, sold and exchanged, or bartered, sold and exchanged * * *." (ACLA 1949, Section 35-4-14, sub-part (5), as amended by Chapter 131, SLA 1953.)

All such licenses, both within and without incorporated towns are issued by the Clerk of the Court in compliance with the order of the Court. (ACLA 1949, Section 35-4-12.) It is the function of the Court at the time set for hearing upon any such application to consider the same "and any protests that may be filed against the same, and * * * (to) * * * also hear the applicant or others appearing in connection with

the matter, and give its judgment, which shall be final. * * *” (ACLA 1949, Section 35-4-13, as amended by Chapter 131, SLA 1953.)

The function of a city council in reference to such applications was discussed by the late Judge Dimond in *In re Alaska Labor Trades Ass’n.*, 10 Alaska 477, at pages 485, 486, as follows:

“It is notable that with respect to applications for places outside of incorporated cities no showing is required, in the application or otherwise, ‘as to the integrity of the applicant and the desirability of the issuing of a license for the premises mentioned.’ Apparently all that is necessary is such an application in compliance with law and the consent of a majority of the local residents. As to an application for use in an incorporated city, however, the prescribed procedure is, as above stated, by reference first to the city council. Nothing in the law indicates that the court is bound by the action of a city council, although the decision of the council is entitled to great respect and consideration. That the court must exercise lawful and sound, and not arbitrary, discretion in granting or refusing licenses is beyond question. Apparently it is within the power of the court to deny an application which has been approved by the council, and likewise within its power to approve an application which has been rejected by the council. It may well be that all matters relating to the integrity of the applicant and the desirability of issuing the license are addressed to the discretion of the city council and not to that of the court. In that view, the court may not justly refuse to grant an application showing compliance with the law

if the city council has approved the application, nor may the court grant an application which has been disapproved by the council upon grounds of lack of integrity or desirability though the application itself shows compliance with law, except, possibly, for arbitrary or capricious action by the council amounting to abuse of discretion. At any rate it is obvious that in all cases the provisions of law must control: that no application should be denied by the court which is in conformity with law and is approved by the city council, and no application should be granted by the court where it appears that although the application has been approved by the city council the application is not in conformity with law and it is obvious that the license cannot be availed of without continuous violation of law."

It is to be noted the requirement of consent by a majority of the local residents referred to by Judge Dimond was raised to a consent by two-thirds of the local residents in 1953.

The Court below relied on the following statutes as authority for it to transfer a liquor license from one location to another: ACLA 1949, Section 35-4-13, as amended by Chapter 131, SLA 1953, which provides in part as follows:

"* * * No license issued under the provisions of this Act shall be transferred except after first securing the consent of the court * * *."

and ACLA 1949, Section 35-4-19, which provides in full as follows:

"No license shall be issued for a greater period than one year; and no licenses shall be trans-

ferred by the licensee to any other person except with the written consent of the Court, but authority for the same shall issue upon application thereto in writing."

The language as quoted does not expressly or by necessary implication authorize the Court to transfer a liquor license from one location to another. Certainly it does not expressly authorize such transfer. Since, concededly, the license is to "dispense liquor" at a particular location and the statute refers to a transfer "by the licensee to any other person" the necessary implication is, in fact, that licenses be transferred from person to person only.

It is difficult for appellants to perceive how the Court had authority, statutory or otherwise, to confer on the transferee of a license any greater privilege than was possessed by the transferor.

Applications for an annual license or for a renewal thereof are required to be submitted to a council for its approval or disapproval. But under the holding of the Court below, a new location can be obtained without that approval. The distinction between an "original application" and a "motion to transfer" under such circumstances is meaningless. In either case, the interest of a city and its council is the same. Why attribute to the Legislature, then, the anomalous intent of requiring prior approval in one case and not the other?

Nor is it a sufficient answer to the problem to state that liquor licenses have value and are therefore transferable from location to location. The question

of their transferability should be first determined. Upon that determination turns the question of their value.

It is to be noted also that the Court below made no distinction between the transfer of licenses for locations without the limits of an incorporated town and those within such limits. No such distinction could be made. And yet, whereas the application for original license without a town requires the consent of two-thirds of the citizens over the age of twenty-one years residing within one mile of the proposed place of business, the Court could, according to its opinion, approve a transfer of site without the consent of two-thirds of the citizens residing within a one mile radius of the new place of business; and for ought that appears, could transfer a license from without the town to a place within it.

Undue hardship to lessees and loss of the licensed premises by fire are cited by the Court below as militating against any construction of the law which would prevent a transfer from location to location. This argument should be addressed to the Territorial Legislature. That body can provide for transfers of location and set up a procedure whereby the interests of the City are adequately protected. In this connection, the Court below was apparently disturbed by its position and required the appellee Boinich to prepare and serve notice of hearing on the appellant City on appellee's Motion for Transfer. (Opinion of Court below, Tr. 15.) The Court below realized that there was no statutory necessity for a hearing on motions for

transfer, but, having decided to enlarge on its statutory authority, it also found it necessary to fill a procedural vacuum created by such enlargement.

The case of *State v. Paige*, 123 Mont. 301, 213 P. (2d) 441, supports appellant's position that where a liquor license is confined to a particular premises, statutory authority to transfer such license does not authorize a change of its location.

CONCLUSION.

In conclusion, for the reason that the Court below had no authority to order Beverage Dispensary License No. 5581 transferred from one location to another, it is respectfully submitted that the order of said Court to that effect be set aside.

Dated, Fairbanks, Alaska,
October 25, 1955.

Respectfully submitted,
WILLIAM V. BOGGESS,
Attorney for Appellants.

(Appendix Follows.)

Appendix.



Appendix

The relevant provisions of the Statutes cited are as follows:

ACLA 1949, Section 35-4-11:

35-4-11. *Liquor manufacture and traffic controlled by Act: What included in term "intoxicating liquor."* No person, firm, corporation or company shall manufacture, sell, offer for sale or keep for sale, traffic in, barter or exchange for goods in this Territory, any intoxicating liquor except as hereinafter provided; but this shall not apply to sales made by a person under provisions of law requiring him to sell personal property. Whenever the term "intoxicating liquor" is used in this Act it shall be deemed to include whiskey, brandy, rum, gin, wine, ale, porter, beer, hooch-inoo and all spirituous, vinous, malt and other fermented or distilled liquors.

ACLA 1949, Section 35-4-12:

35-4-12. *Licenses: Issuance: Record.* The licenses provided for in this Act shall be issued by the Clerk of the District Court or any subdivision thereof in compliance with the order of the Court or Judge thereof duly made and entered; and the Clerk of the Court shall keep a full record of all applications for licenses and of all recommendations for and remonstrances against the granting of licenses and of the action of the Court thereon.

ACLA 1949, Section 35-4-13, as amended by Chapter 131, SLA 1953:

35-4-13. *Application for license: Consent of citizens: Proceedings and hearings on application: Posting license: Transfer of license: Refund of fees: Renewals.* Before any license is granted, as provided in this Act, it shall be shown to the satisfaction of the Court that two-thirds of the citizens over the age of twenty-one years, residing within one mile of the place where intoxicating liquor is to be manufactured, bartered, sold and exchanged, or bartered, sold or exchanged, have in good faith consented thereto and no license shall be granted in the absence of such evidence; provided, that when it is made to appear that two-thirds of said citizens over the age of twenty-one years of any one place outside the corporate boundaries of an incorporated town have consented to the manufacture, barter, sale and exchange or the barter, sale and exchange of intoxicating liquor, no further proof of the consent of the citizens of the place where such intoxicating liquor is to be manufactured, bartered, sold and exchanged, or bartered, sold and exchanged, will be required for a renewal upon application approved by the Court of said license from year to year so long as the licensee shall not have been found guilty of an infraction of the Territorial liquor laws; provided applicant shall file a sworn statement to the effect that applicant has not been convicted of any infraction of the Territorial Liquor Laws.

Provided, however, that any application for a license coming from within an incorporated town shall have attached thereto in lieu of two-thirds of the citizens of that district, a list of at least five references as to the integrity of the applicant *and the desirability of the issuing of a*

license for the premises mentioned therein. The Clerk of the Court, upon receipt of each application from within an incorporated town, shall notify the city council of that town of the necessity for action on the application by the council, in regular or special meeting and the filing with the Clerk of the Court of a certificate showing the action taken. A failure of the municipal officers to act upon applications for licenses within the period specified in the notice furnished them shall be considered a default and shall subject the city to the penalty of losing its right to a refund as herein provided. At the time set for the hearing, the Court shall consider the application and any protests that may be filed against the same, and shall also hear the applicant or others appearing in connection with the matter, and give its judgment, which shall be final. If the application is rejected the fee accompanying the same shall be returned. The licensee shall cause the license to be posted in a conspicuous position in his place of business, so that anyone entering the premises may easily read it. No license issued under the provisions of this Act shall be transferred except after first securing the consent of the Court. No refund of license fees will be allowed after the issuance of license.

ACLA 1949, Section 35-4-14, as amended by Chapter 131, SLA 1953:

35-4-14. *Filing, form and contents of application: False statements in application.* All applicants for licenses mentioned herein shall file with the Clerk of the District Court an application in writing, signed and sworn to by the applicant, giving his name and address, and, if a corpora-

tion, executed by the duly authorized officers thereof, containing the following:

(1) Kind of license desired;

(2) *A description of the place for which the license is desired, giving address by street and number, or other information, so that the location can be definitely determined;*

(3) A statement of the citizenship or corporate qualifications of the applicant;

(4) The necessary license fee;

(5) Together with the consent of two-thirds of citizens over the age of twenty-one years, residing within one mile of the place where the intoxicating liquor or liquors are to be manufactured, bartered, sold and exchanged, or bartered, sold and exchanged; provided, however, that as pertaining to applicants for licenses outside the corporate boundaries of an incorporated town, said consent shall not be required for a renewal of said license from year to year so long as the licensee shall not have been found guilty of an infraction of the Territorial liquor laws. That if any false material statement is made in any part of such application the applicant or applicants shall be deemed guilty of perjury and upon conviction thereof shall be subject to the penalty provided by law for the crime of perjury.

That should it appear to the District Court that any of the statements above enumerated and required in the application are untrue at the time of application for such license, such application shall be denied. That should it appear to the District Court after the granting of such license that any of the statements above enumerated and

required to be made in the application are untrue, it shall be the duty of the Court to forthwith enter an order revoking such license and all license moneys deposited by the applicant shall be thereby forfeited to the Territory, and it shall be the duty of the United States Marshals and their deputies, and United States Attorneys and their assistants, and all chiefs of police and other peace officers in their respective Divisions, Districts, Towns or settlements to investigate and report to the District Court any violation of any of the provisions of this Act.

ACLA 1949, Section 35-4-15(1), as amended by Chapter 54, SLA 1951:

35-4-15. *Restrictions on sale or disposition of liquor: Minors, intoxicated persons and drunkards: Election days: Near churches and schools: Licensee's premises and inspection thereof: Licenses: Seizure and sale of contraband liquor.*

(1) (Sale, etc., to minors, intoxicated persons or drunkards: Classification of premises.) It shall be unlawful to give, barter or sell any intoxicating liquors, including beer and wine, to any person under the age of twenty-one years, to any intoxicated person, or to any habitual drunkard; and it shall be unlawful for any licensee to permit the giving, selling, bartering or drinking of any intoxicating liquor *within the premises covered by any license* to or by any of the forbidden classes, nor shall such licensee permit the drinking of hard or distilled liquors by any person *upon the premises covered by his license*, unless the same is permitted under the classification of his license.

(Revocation of license: Persons deemed minors.) The drinking of intoxicating liquors on *the premises covered by any license* by any of the forbidden classes, or the presence of any intoxicated person on such premises, shall be cause for revocation of any such license, and further, that any person attending any grade or high school shall be considered less than twenty-one years of age, and the burden of determining the age shall be on the licensee.

(Sales on election day.) It shall be unlawful to give, barter, sell, or in any way dispose of any intoxicating liquor, including beer and wine, upon any day on which any general, special, or Primary Election is held in the Territory or to so dispose of liquor in any Municipality or other Political Subdivision thereof when an election is being held therein until the polls have been closed on such day.

ACLA 1949, Section 35-4-15 (2):

(2) (Presence of minors on premises.) It shall be unlawful to permit any person under the age of twenty-one years to enter any Beverage Dispensary unless the said minor is accompanied by his parent or guardian.

ACLA 1949, Section 35-4-15 (3), as amended by Chapter 83, SLA 1949 and Chapter 116, SLA 1953:

(3) (Proximity to School or Church.) No beverage dispensary license or package liquor store license shall be issued for the sale of any intoxicating liquor in any building within two hundred feet of any school ground or church building by shortest direct line from such school ground or

church building, within any corporate municipality, nor within one quarter of a mile of any school ground or church building where such school ground or church building is located outside the corporate limits of a municipality; provided, further, that no license as referred to in this section shall be issued for use in any building within two miles of any land grant University. Provided, however, that a license may be reissued for the sale of intoxicating liquor in any building in which such sale was authorized by law at a time subsequent to March 23, 1949.

Be it further provided, however, that when a license for the sale of intoxicating liquor in any building within 200 feet of a school ground or church building, within the corporate limits of a municipality, or within a quarter of a mile in areas outside the corporate limits of a municipality, is forfeited by reason of a violation of law, no license for the sale of intoxicating liquor on those premises shall thereafter be issued.

ACLA 1949, Section 35-4-15 (4):

(4) (Premises to be accessible for inspection.) The premises of licensees under this Act shall be easily accessible for inspection by municipal officers, United States Attorneys, Assistant United States Attorneys, United States Marshals, Deputy Marshals and Clerks of the District Court, and all other officers charged with the enforcement of the provisions of this Act, during all regular hours of the transaction of business upon said premises. *For the purpose of this Act, the premises covered by any license issued hereunder, shall be held to include all*

rooms in any building which can be reached without leaving the building.

ACLA 1949, Section 35-4-15 (5):

(5) (Stock confined to licensed premises: Sale from carrier or boat.) It shall be unlawful for the holder of any Wholesaler's, Brewer's, Distiller's, or Bottler's License to carry for sale any stock of intoxicating liquors in the Territory *except on the premises licensed*, and it shall be unlawful for any of the four above-mentioned classes to sell any such intoxicating liquors from any boat or other carrier.

ACLA 1949, Section 35-4-15 (8):

(8) (Duration of licenses.) Licenses granted upon any application made prior to July 1, 1937, for any new licenses, or for the renewal of existing licenses, shall be effective only to that date, and all licenses thereafter shall be issued for the fiscal year, ending December 31, but no license shall be issued for less than one-half year.

ACLA 1949, Section 35-4-15 (10), (11), (12), (13), (14) as added by Chapter 115, SLA 1955:

(10) Any person who influences or attempts to influence the sale, giving or serving of intoxicating liquor, including beer and wine, to a person under twenty-one years of age, by misrepresenting the age of such person, or who shall order, request, receive, or procure intoxicating liquor from any licensee, employee, or other person for the purpose of selling, giving, or serving the same to a person under twenty-one years of age, is guilty of a misdemeanor.

(11) Any person under the age of twenty-one years who shall *enter any licensed premise* where intoxicating liquor is sold, not in the company of his or her parent or legal guardian, or who shall offer or present to any licensee, employee, or other person a fraudulent or false certificate of birth or other written evidence of age, which is not actually his or her own, or who shall otherwise misrepresent his or her age, for the purpose of inducing the licensee or employee, or other person to sell, give, serve, or furnish intoxicating liquor contrary to law, is guilty of a misdemeanor.

(12) Any licensee, employee or other person who questions, or has reason to question, whether a person *entering upon a licensed premises*, or ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of intoxicating liquor, has attained the age of twenty-one years, shall require such person to sign a statement that he or she is over the age of twenty-one years. Said statement shall be made upon a form to be prepared by and furnished to the licensee, employee, or other person by the Territorial Tax Commissioner.

(13) Any licensee, employee, or other person who allows to remain *upon a licensed premises* where intoxicating liquors are sold, not in company of his or her parent or legal guardian, or sells, gives, or serves intoxicating liquor to any person under the age of twenty-one years, without having procured the signature of said person upon a statement as herein provided, or who knowingly sells, gives, or serves intoxicating

liquor to or allows said person to *remain on a licensed premises* where intoxicating liquor is sold, shall be guilty of a misdemeanor.

(14) Any person violating any provision of this Act, or any provision of the law of Alaska pertaining to intoxicating liquor, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment of not more than one year or by a fine of not more than \$500.00. When the violation *involves a licensed premises* in addition to all other penalties that may be imposed by this Act, the following punishment may be also imposed, each violation to be considered a separate offense, as follows:

First Violation: *The license of the premises involved* may be suspended for not less than ten nor more than forty-five (45) days;

Second Violation: *The license of the premises involved* may be suspended for a period of not less than 30 nor more than ninety (90) days;

Third Violation: The license may be cancelled; the bond may be forfeited.

ACLA 1949, Section 35-4-19:

35-4-19. *Duration and transfer of licenses.* No license shall be issued for a greater period than one year; and no licenses shall be transferred by the licensee to any other person except with the written consent of the Court, but authority for the same shall issue upon application thereto in writing.

ACLA 1949, 35-4-21 (A):

(A) Beverage dispensary licenses: (Bond; Penalties: Revocation: Employees: Existing

Licenses:)
A Beverage Dispensary license shall give to the holder thereof the right to sell or serve on the premises beer, wine and hard liquors for consumption on the premises only. Provided, however, that the premises for which such license is issued shall not be connected by doors or otherwise with premises covered by any other license issued under these regulations; and provided further, that the sales under Beverage Dispensary Licenses are limited to less than five wine gallons to any one person in any one day. A Beverage Dispensary License Fee shall be Five Hundred Dollars (\$500.00) in all towns, villages, settlements and places of population not exceeding fifteen hundred persons and One Thousand Dollars (\$1,000.00) in all towns, villages and incorporated cities having the population in excess of fifteen hundred persons and all applicants desiring a Beverage Dispensary License, at the time of filing with the District Court, (?) the applicant for such license shall also file a bond, either in cash or a surety company bond, to be approved by the Court, the condition of such bond or undertaking shall be, that the licensee or licensees are the sole owners and that no other persons are financially interested either directly or indirectly and will conduct said business in accordance with the existing laws pertaining to the manufacture and sale of intoxicating liquor in Alaska. Such bond shall be in the penal sum of Twenty-five Hundred Dollars (\$2500.00). Upon conviction for violation of the laws of Alaska pertaining to the manufacture and sale of intoxicating liquor or upon revocation of a license, said bond shall be forfeited and covered into the Territorial Treasury.

The Judge of the District Court for the Territory of Alaska is hereby empowered and authorized to revoke any license hereafter granted, as well as those now issued. Complaints for revocation of licenses under this Act shall be filed by the U. S. Attorney, his assistants or any Federal or any Territorial Enforcement Officer. Such complaints shall be filed with the Clerk of the U. S. District Court. Upon such complaint being filed, duly verified, the U. S. District Judge shall issue an order to show cause against the licensee and upon hearing the same, or upon default of the licensee, the said Judge shall issue his judgment and order in the matter.

Penalty for violation of any of the provisions of this Act shall be as follows:

For the first violation, *the licensed premises* shall be closed for a period of forty-five (45) days;

For the second violation, *the licensed premises* shall be closed for a period of ninety (90) days;

For the third violation, the bond shall be forfeited, the license cancelled and the premises abated for one year for use as a beverage dispensary.

The holder of any license which has been revoked as herein provided shall not be entitled to apply for and receive another license under this Act for a period of five years from the date of the Order of Revocation.

All employees serving intoxicating liquor in a Beverage Dispensary shall be male citizens of the United States, over the age of 21 years and of good moral character. Any such employee of such

place violating the provisions of this Act shall be equally guilty with the holder of the license and shall be punished accordingly. The Treasurer of Alaska is empowered and directed, with respect to existing licenses, to make any and all adjustments necessary by extending credit on new licenses or making refunds to the licensees for the unused portion of the licenses heretofore issued at the option of the licensee.

Provided that such beverage dispensary licensee shall be permitted to continue in operation during the period for which his present license is effective, if he shall so elect. Provided, however, such license shall not be extended to include intoxicating liquor other than beer or wine unless he first obtain a new license and post bond as provided hereinbefore.

